

Message Text

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PAGE 01 GENEVA 06651 01 OF 03 191856Z

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ACTION ACDA-10

INFO OCT-01 ISO-00 ACDE-00 SSO-00 NSCE-00 INRE-00 USIE-00

AF-08 ARA-06 CIAE-00 DODE-00 EA-07 EUR-12 PM-04 H-02

INR-07 IO-13 L-03 NASA-01 NEA-10 NSAE-00 NSC-05

OIC-02 SP-02 PA-01 PRS-01 OES-06 SS-15 SAJ-01 /117 W

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O R 191710Z AUG 76

FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 1956

AMEMBASSY BONN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY THE HAGUE

AMEMBASSY OTTAWA

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C O N F I D E N T I A L SECTION 1 OF 3 GENEVA 6651

DISTO

E.O. 11652: GDS

TAGS: PARM, CCD

SUBJ: CCD - ENMOD WORKING GROUP MEETINGS, AUG 17 AND 18, 1976

1. SUMMARY: ENMOD WORKING GROUP RESOLVED SOME
PERIPHERAL ISSUES AUG 17-18, BUT ARTICLES 8, II
AND III REMAIN AT VARIOUS REMOVES FROM AGREEMENT. US
RECAPITULATED POSITION ON ARTICLE I, MAINTAINING THAT
PRESENT TEXT, INCLUDING ITS FORMULATION OF TREATY SCOPE,
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PAGE 02 GENEVA 06651 01 OF 03 191856Z

IS APPROPRIATE AND ADEQUATE FOR MEETING TREATY OBJECTIVES.

HOWEVER, US INDICATED IT COULD CONSIDER INCLUDING PROPORTIONALITY ELEMENT IN INTERPRETATION OF SCOPE FORMULATION, AND ALLUDED TO POSSIBILITY OF EXAMINATION OF TREATY'S EFFECTIVENESS BY REVIEW CONFERENCE. DLETION OF ILLUSTRATIVE LIST OF ENVIRONMENTAL PHEOMENA WAS SUPPORTED WIDELY, BUT SEVERAL DELS EXPRESSED STRONG RESERVATIONS. COMPROMISE WAS WORKED OUT ON FIRST PART OF ARTICLE III (APPLICABILITY TO PEACEFUL ENMOD USES), BUT US AND MEXICO ARE DEADLOCKED OVER SECOND PART (INTERNATIONAL COOPERATION IN SUCH USES). DEL RECOMMENDS ACCEPTING INDIAN COMPROMISE PROPOSAL ON REVIEW CONFERENCES WHICH AVOIDS AUTOMATICITY. END SUMMARY

2. ENMOD WORKING GROUP MET AFTERNOON OF AUG 17 AND BOTH MORNING AND AFTERNOON OF AUG 18. FOLLOWING ACCOUNT SUMMARIZES OVERALL DISCUSSIONS AND IS ARRANGED IN TOPIC ORDER: PREAMBLE, ARTICLE I, ARTICLE II AND ISSULSTRATIVE LIST, ARTICLE III, ARTICLE V, ARTICLE VII BIS (REVIEW CONFERENCES), ARTICLE VIII, ARTICLE IX.

3. PREAMBLE. FRG REP (SCHLAICH), NOTING THAT FRG HAS WITHDRAWN OBJECTION TO FORMULATION "MILITARY OR ANY OTHER HOSTILE USE" IN ARTICLE I AND IN THE TITLE, NEVERTHELESS STRONGLY URGED THAT WORDS "MILITARY OR ANY OTHER" BE DROPPED FROM PREAMBULAR PARA 5 (REVISED VERSION OF PREAMBLE PROPOSED BY CO-SPONSORS ON JULY 12). THIS PARA WOULD THEN READ AS FOLLOWS: "RECOGNIZING, HOWEVER, THAT HOSTILE USE OF SUCH TECHNIQUES COULD HAVE WIDESPREAD, LONG-LASTING OR SEVERE EFFECTS HARMFUL TO HUMAN WARFARE;". SCHLAICH ARGUED THAT THIS VERSION WOULD BE MORE ALL-EMBRACING. HIS PROPOSAL WAS SUPPORTED BY CANADIAN REP (SIMARD), WHO SAID THAT SINCE PHRASE "MILITARY OR ANY OTHER HOSTILE USE" WOULD REMAIN IN ARTICLE I, THE OPERATIVE PART, THIS WOULD BE A COMPROMISE. USSR ACTING REP (KASHIRIN) SAID SOVIETS COULD GO ALONG WITH FRG PROPOSAL. (COMMENT: DEL RECOMMENDS ACCEPTANCE OF PROPOSAL, WHICH WE JUDGE WOULD HAVE NO SUBSTANTIVE EFFECT AND WOULD BE SOP TO FRG SENSIBILITIES IN LIGHT OF THEIR ABANDONMENT OF PERSISTENTLY SOUGHT AFTER CHANGE IN ARTICLE I).

4. ARTICLE I. FOLLOWING DELS SUPPORTED EXISTING FORMULATION
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PAGE 03 GENEVA 06651 01 OF 03 191856Z

OF ARTICLE I, AS WELL AS DEFINITIONS PROPOSED BY US FOR TERMS "WIDESPREAD, LONG-LASTING OR SEVERE"; INDIA (MISHRA), NETHERLANDS (VAN DER KLAUW), BRAZIL (MASTROGIOVANNI), ITALY (MORENO), AND POLAND (OLSZOWKA). JAPAN (OGISO) RENEWED BID FOR INCLUSION OF BAN ON THREAT OF USE, AND WAS JOINED BY SWEDEN (HAMILTON), BUT US ALT REP (BLACK) INDICATED THAT US REMAINS OPPOSED TO DOING SO ON GROUNDS THIS WOULD UNDESIRABLY ADD ELEMENT OF SUBJECTIVITY TO TREATY.

5. ARGENTINE REP (BERASATEGUI) RESTATED STRONG OPPOSITION TO EXISTING ARTICLE I FORMULATION, ESPECIALLY WORDS "WIDESPREAD, LONG-LASTING OR SEVERE," REFERRING TO HIS STATEMENTS IN CCD PLENARY ON AUG 26, 1975 AND ON MARCH 16, 1976, AS WELL AS DETAILED EXPLANATIONS IN PREVIOUS ENMOD WORKING GROUP MEETINGS. ROMANIAN REP (ENE) SUMMARIZED HIS OPPOSITION TO ARTICLE I AND THE US DEFINITIONS OF "WSLLS" BY STAATING THREE MAIN POINTS: (A) THE ENMOD CONVENTION SHOULD REMOVE ALL THE DANGER OF MILITARY OR OTHR HOSTILE USE OF ENMOD TECHNIQUES, AND SHOULD THEREFORE BE COMPREHENSIVE; (B) IF A COMPREHENSIVE BAN IS NOT FEASIBLE IN A PARTICULAR AGREEMENT, IT SHOULD AT LEAST CONTAIN AN UNDERTAKING BINDING THE PARTIES TO PUT A COMPLETE END TO THE PARTIALLY PROSCRIBED ACTIVITES IN THE SHORTEST POSSIBLE TIME; (C) THE PRINCIPLE OF QUANTIFYING THE THRESHOLD, AS IMPLIED IN THE DEFINITIONS, IS EVEN MORE OBJECTIONABLE THAN THE DEFINITIONS THEMSELVES, BECAUSE IT MEANS THAT PARTIES GIVE THEIR CONSENT TO HOSTILE ENMOD ACTIVITES PROSECUTED AGAINST THEIR COUNTRY WHICH ARE BELOW THE THRESHOLD IN EXTENT, DURATION, OR SEVERITY.

6. CANADIAN REP (SIMARD) ANNOUNCED THE STRONG VIEW OF THE CANADIAN GOVT THAT THE TERMS "WIDESPREAD, LONG-LASTING OR SEVER" SHOULD NOT BE DEFINED, BECAUSE THIS WOULD PRESENT A DANGER OF NARROWING THE APPLICATION OF THE DRAFT ENVIRONMENTAL PROTOCOLS OF THE LAWS OF WAR -- IN WHICH THE PHRASE "WIDESPREAD, LONG-TERM, AND SEVERE" IS USED REPEATEDLY, AND IN WHICH ENTIRELY DIFFERENT DEFINITIONS ARE NECESSARY. NETHERLANDS ALT REP (MEERBURG) ALSO INDICATED CONCERN OVER THIS PROBLEM, BUT DECLARED ON THE CONTRARY THAT IF THE WORDS "WIDESPREAD, LONG-LASTING OR SEVERE" REMAIN THEY WILL HAVE TO BE DEFINED CLEARLY. PERHAPS, MEERBURG SUGGESTED, CCD'S REPORT TOUNGA
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PAGE 04 GENEVA 06651 01 OF 03 191856Z

COULD STATE THAT THE DEFINITIONS APPLY TO THE ENMOD CONVENTION ONLY. SIMARD REPLIED THAT THIS IS A POSSIBILITY, BUT THAT HE WOULD NOT WISH TO PREJUDGE THE FINAL RESULT OF THE NEGOTIATIONS AND WOULD LIKE TO SEE ALTERNATE FORMULATIONS OF THE THRESHOLD CONCEPT IN WHICH THESE THREE WORDS WOULD NOT APPEAR.

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PAGE 01 GENEVA 06651 02 OF 03 191837Z

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O R 191710Z AUG 76

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C O N F I D E N T I A L SECTION 2 OF 3 GENEVA 6651

7. WINDING UP GROUP'S DISCUSSION OF ARTICLE I AUG 18,
US ALT REP (BLACK) RECAPITULATED US POSITION ON ARTICLE IN
LIGHT OF PRESENT STATUS OF NEGOTIATIONS. BLACK SAID US COULD
NOT ACCEPT PROPOSALS BY SOME DELS TO MAKE TREATY COMPREHENSIVE,
CITING DIFFICULTIES IN IMPLEMENTATION DISPROPORTIONATE
TO ANY POSSIBLE ADDED ARMS CONTROL ADVANTAGES. US DID
NOT CONSIDER SCOPE OF PROHIBITION PERMISSIVE; INDEED,
WITH INTERPRETATIONS WE HAVE AGREED TO MAKE INTEGRAL
PART OF TREATY WE CONSIDERED ARTICLE I PROHIBITION HIGHLY
RESTRICTIVE RESPECTING HOSTILE USE OF ENMOD TECHNIQUES.
BLACK POINTED OUT THAT WE HAVE AGREED TO ADD PROPORTIONALITY
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PAGE 02 GENEVA 06651 02 OF 03 191837Z

ELEMENT TO INTERPRETATION OF "SEVERE", WHICH WOULD HAVE
EFFECT OF LOWERING THRESHOLD FURTHER FOR SOME PURPOSES, AND ALLUDED
TO POSSIBILITY THAT REVCON COULD EXAMINE TREATY'S

EFFECTIVENESS IN ELIMINATING DANGERS OF HOSTILE ENMOD USE.
THRESHOLD APPROACH EMBODIED IN CURRENT DRAFT, HOWEVER, WAS
NOT NEGOTIABLE.

8. ARTICLE II AND ILLUSTRATIVE LIST. NETHERLANDS REP
(VAN DER KLAUW) PROPOSED ABOLISHING ALTOGETHER THE LIST OF
EXAMPLES WHICH ORIGINALLY WERE CONTAINED IN ARTICLE II
ITSELF AND WHICH, PURSUANT TO CO-SPONSORS' PROPOSAL, HAD
BEEN MOVED TO A RELATED ANNEX. THIS, HE SAID, WOULD RESOLVE
PRESENT CONTROVERSIES ABOUT ADDING OR DELETING EXAMPLES,
LEGAL DOUBTS ABOUT THE "BINDING" NATURE OF THE LIST, AND
CONSIDERABLE DIFFICULTIES RELATING TO FUTURE PROPOSALS TO
AMEND THE LIST. VAN DER KLAUW'S PROPOSAL WAS SUPPORTED
BY SWEDEN (HAMILTON), CANADA (SIMARD), BRAZIL (MASTROGIOVANNI),
AND INDIA (MISHRA), AND WAS ACCEPTED BY THE CO-SPONSORS,
US (BLACK) AND USSR (LIKHACHEV). ARGENTINA (BERASATEGUI)
AND ROMANIA (ENE) EXPRESSED RESERVATIONS, DECLARING THAT
THE QUESTION OF THE ILLUSTRATIVE LIST IS TIED TO THE
QUESTION OF THE CONVENTION'S SCOPE (ARTICLE I) AND CAN ONLY
BE RESOLVED IN THAT CONTEXT. JAPANESE REP (OGISO) INDICATED
STRONG PREFERENCE FOR RETAINING ILLUSTRATIVE LIST OF EXAMPLES
IN SOME FORM, SAYING THIS WOULD BE HELPFUL WHEN THE CONVENTION
IS SUBMITTED TO THE DIET FOR RATIFICATION AND THAT DELETING
LIST WOULD WEAKEN THE CONVENTION IN ITS APPLICATION. NETHERLANDS
REP (VAN DER KLAUW) REPLIED THIS COULD NOT BE SO, BECAUSE
LIST IS ONLY ILLUSTRATIVE AND BECAUSE PROHIBITION DEPENDS ON
COMPLETE PROVISIONS OF ARTICLE I(1).

9. IN AUG 18 AFTERNOON METING, NETHERLANDS ALT REP
(MEERBURG) ASKED, ASSUMING LIST IS DROPPED FROM TREATY,
WHETHER CO-SPONSORS INTEND SOME SORT OF DECLARATION OR
INTERPRETATIVE STATEMENT TO INDICATE THEIR UNDERSTANDING
OF THE TYPES OF EFFECTS WHICH WOULD INVOKE TREATY PROHIBITION.
US ALT REP (BLACK) REPLIED THAT THE US IS
PREPARED TO CONSIDER HOW SUCH AN UNDERSTANDING
MIGHT BE RECORDED IN AN APPROPRIATE MANNER. (COMMENT: DEL
IS EXPLORING WITH SOVIETS AND SEVERAL OTHER INTERESTED DELS
(E.G. SWEDEN) POSSIBILITY OF AGREED STATEMENT ON BEHALF OF
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PAGE 03 GENEVA 06651 02 OF 03 191837Z

COMMITTEE. ALTHOUGH SOVIETS ARE WILLING TO CONSIDER SUCH
STATEMENT ON BASIS OF EXISTING LIST, WE BELIEVE EXPANDING
LIST TO INCLUDE MUTUALLY ACCEPTABLE ADDITIONAL EXAMPLES
WILL BE NECESSARY FOR CONSENSUS ON CCD AGREED STATEMENT.
WE HAVE ASKED SOV DEL TO SEEK APPROPRIATE INSTRUCTIONS.)

10. ARTICLE III. ARGENTINE REP (BERASATEGUI) REPORTED AUG 17
ON STATUS OF ARTICLE III DISCUSSION IN CONTACT GROUP
(INCLUDING US AND USSR). THE GROUP, HE SAID, IS AGREED UPON A NEW
PREAMBULAR PARA, PARA 1 IN ARTICLE III, AND THE WORDING OF A CCD

INTERPRETATIVE DECLARATION IN ITS REPORT TO UNGA. HOWEVER, DISAGREEMENTS PERSIST REGARDING PARA 2 OF ARTICLE III.

11. BERASTEGUI READ OUT FOLLOWING TEXTS: (A) Q NEW PREAMBULAR PAR 4 BIS (FOLLOWING PRESENT PARA ON PEACEFUL USES): "TAKING ACCOUNT, IN THIS CONNECTION, OF THE DECLARATION OF THE UNITED NATIONS CONFERENCE ON HUMAN ENVIRONMENT;" (B) NEW PARA 1 OF ARTICLE III: "THE PROVISIONS OF THIS CONVENTION SHALL NOT HINDER THE USE OF ENVIRONMENTAL MODIFICATION TECHNIQUES FOR PEACEFUL PURPOSES AND SHALL BE WITHOUT PREJUDICE TO GENERALLY RECOGNIZED PRINCIPLES AND APPLICABLE RULES OF INTERNATIONAL LAW CONCERNING SUCH USE."

(C) CCD INTERPRETATIVE DECLARATION: "IT IS THE UNDERSTANDING OF THE COMMITTEE THAT THIS CONVENTION DOES NOT DEAL WITH THE QUESTION WHETHER OR NOT A GIVEN USE OF ENVIRONMENTAL MODIFICATION TECHNIQUES FOR PEACEFUL PURPOSES IS IN ACCORDANCE WITH GENERALLY RECOGNIZED PRINCIPLES AND APPLICABLE RULES OF INTERNATIONAL LAW." (COMMENT: INDIAN REP (MISHRA) INSISTED ON THIS AS PART OF COMPROMISE PACKAGE).

(D) AGREED-UPON FIRST PART OF PARA 2 OF ARTICLE III (INTRODUCED BY CO-SPONSORS): "THE STATES PARTIES TO THIS CONVENTION UNDERTAKE TO FACILITATE, AND HAVE THE RIGHT TO PARTICIPATE IN, THE FULLEST POSSIBLE EXCHANGE OF SCIENTIFIC AND TECHNICAL INFORMATION ON THE USE OF ENVIRONMENTAL MODIFICATION TECHNIQUES FOR PEACEFUL PURPOSES." STILL UNDER CONSIDERATION, BERASTEGUI SAID, IS THE NEED FOR ADDED WORDING IN PARA 2 REGARDING INTERNATIONAL COOPERATION IN PEACEFUL ENMOD USES, ON BASIS OF MEXICAN OR US PROPOSALS. (COMMENT: SURVIVING US ALTERNATIVE IS CONFIDENTIAL

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PAGE 04 GENEVA 06651 02 OF 03 191837Z

POSSIBILITY (B) IN PARA 4 OF STATE 202814; POSSIBILITY (A) WAS REJECTED. MEXICAN PROPOSAL IS CITED IN PARA 7 OF GENEVA 6477.)

12. ITALIAN REP (DI BERNARDO) SAID HE BELIEVES THE COMPROMISE ARTICLE III TO BE HEADED IN THE RIGHT DIRECTION, AND EXPECTS TO BE ABLE TO ACCEPT IT AD REFERENDUM. BRAZILIAN REP (MASTROGIOVANNI) INDICATED WILLINGNESS TO ACCEPT THE COMPROMISE, CONDITIONED ON A FINAL JUDGMENT BY BRAZIL ON ITS RELATIONSHIP TO THE OVERALL CONVENTION AND ON THE UNDERSTANDING THAT THE FIRST PART OF ARTICLE III, PARA 2 IS LIMITED IN SCOPE TO THE RIGHT OF EVERY STATE PARTY TO HAVE FREE ACCESS TO SCIENTIFIC AND TECHNOLOGICAL INFORMATION ON THE USE OF ENMOD TECHNIQUES FOR PEACEFUL PURPOSES.

13. ARTICLE V. AFTER A LENGTHY DISCUSSION OF ARTICLE V, PARA 3 ORIGINALLY PARA 2), THE FOLLOWING VERSION, ARISING

FROM CANADIAN-PROPOSED AMENDMENTS, WAS SUPPORTED BY INDIA (MISHRA), CANADA (SIMARD), US (BLACK), AND USSR (KASHIRIN) AND WAS ACCEPTED BY THE WORKING GROUP BY CONSENSUS: "ANY STATE PARTY TO THIS CONVENTION WHICH HAS REASON TO BELIEVE THAT ANY OTHER STATE PARTY IS ACTING IN BREACH OF OBLIGATIONS DERIVING FROM THE PROVISIONS OF THE CONVENTION MAY LODGE A COMPLAINT WITH THE SECURITY COUNCIL OF THE UNITED NATIONS. SUCH A COMPLAINT SHOULD INCLUDE ALL RELEVANT INFORMATION, AND ALL POSSIBLE EVIDENCE SUPPORTING ITS VALIDITY, AS WELL AS A REQUEST FOR ITS CONSIDERATION BY THE SECURITY COUNCIL."

14. AS PROPOSED BY INDIAN REP (MISHRA), AND PURSUANT TO PAKISTANI SUGGESTION TO REVISE ARTICLE IX (DISCUSSED BELOW), WORKING GROUP AGREED BY CONSENSUS TO DELETE WORDS "WHICH FORMS AN INTEGRAL PART" FROM THE NEW PARA 2 OF ARTICLE V. EFFECT IS TO PLACE IN ARTICLE IX STATEMENT THAT ALL ANNEXES FORM AN INTEGRAL PART OF THE CONVENTION.

15. CANADIAN REP (SIMARD) REQUESTED THAT AUG 4 SOVIET EXPLANATION OF WORD "ASSISTANCE" (CONTAINED PARA 12 OF GENEVA 6539) IN ARTICLE V(5) FORM THE BASIS FOR A CCD INTERPRETATIVE DECLARATION TO BE INCLUDED IN CCD'S REPORT TO UNGA.
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PAGE 05 GENEVA 06651 02 OF 03 191837Z

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PAGE 01 GENEVA 06651 03 OF 03 191841Z

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TO SECSTATE WASHDC IMMEDIATE 1958
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C O N F I D E N T I A L SECTION 3 OF 3 GENEVA 6651

16. ARTICLE VII BIS (REVIEW CONFERENCE). US PROPOSAL FOR PROVISION REGARDING SUBSEQUENT REVCONS (PER PARA 1 OF STATE 202003) WAS CRITICIZED BY ARGENTINA (BERASATEGUI) AND YUGOSLAVIA (MIHAJLOVIC) AND WAS SUPPORTED BY NO ONE, LEAVING US APPARENTLY ISOLATED. HOWEVER, US DEL MAINTAINED POSITION THAT CONVENING REVCON SUBSEQUENT TO FIRST ONE SHOULD NOT BE MADE ENTIRELY AUTOMATIC, IRRESPECTIVE OF ANY INTEREST OF PARTIES IN HOLDING SUCH A CONFERENCE. AFTER SOME DISCUSSION INDIAN REP (MISHRA) SUGGESTED AMENDING LAST SENTENCE OF US PROPOSAL ALONG FOLLOWING LINES: "IF ONE-THIRD OF THE STATES PARTY OR TEN STATES PARTY, WHICHEVER IS LESS, RESPOND AFFIRMATIVELY, THE DEPOSITARY SHALL TAKE CONFIDENTIAL

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PAGE 02 GENEVA 06651 03 OF 03 191841Z

IMMEDIATE STEPS TO CONVENE THE CONFERENCE." NETHERLANDS REP (VAN DER KLAUW) AND BULGARIAN REP (GRINBERG) SUPPORTED INDIAN SUGGESTION. US ALT REP (BLACK) THANKED MISHRA FOR HIS EFFORT AT ACCOMMODATION AND SAID SUGGESTION WOULD BE REPORTED FAVORABLY, SINCE IT MEETS THE KEY US CONCERN TO AVOID TOTAL AUTOMATICITY FOR CONVENING REVCONS SUBSEQUENT TO THE FIRST ONE. COMMENT: DEL WOULD APPRECIATE RAPID CONFIRMATION THAT WE CAN ACCEPT INDIAN PROPOSAL WHICH WE BELIEVE COMPLETELY MEETS NEED TO AVOID AUTOMATICITY PRECEDENT. AS PRATICAL MATTER, IF TEN PARTIES WANT REVCON, ONE THIRD ARE VERY LIKELY TO DO SO.

17. ARTICLE VIII. US ALT REP (BLACK) INDICATED ACCEPTANCE OF PROPOSAL TO SPECIFY TWENTY RATIFICATIONS FOR ENTRY INTO FORCE OF THE ENMOD CONVENTION. WORKING GROUP ADOPTED THIS PROVISION FOR ARTICLE VIII(3) BY CONSENSUS.

18. ARTICLE IX. PAKISTANI REP (SALEEM) PROPOSED AMENDING

THE BEGINNING OF ARTICLE IX TO READ AS FOLLOWS: "THIS CONVENTION, OF WHICH THE ANNEXES SHALL FORM AN INTEGRAL PART, AND OF WHICH THE ARABIC, CHINESE, ENGLISH,..." GDR REP (HERDER) AND CANADIAN REP (SIMARD) MAINTAINED IT WAS NOT LEGALLY NECESSARY TO STATE THIS,BUT AGREED TO GO ALONG WITH A CONSENSUS. AFTER FIRST DECIDING ALSO TO MENTION THE PREAMBLE AS AN INTEGRAL PART AND THEN REVERSING ITSELF, THE WORKING GROUP APPROVED THE ORIGINAL PAKISTANI SUGGESTION BY CONSENSUS.

19. NEXT MEETING OF ENMOD WORKING GROUP IS SCHEDULED FOR 10:30 A.M. ON FRIDAY, AUG 20. PURSUANT TO THE CCD PLENARY'S DECISION THAT THE ENMOD WORKING GROUP SHOULD COMPLETE ITS WORK DURING THE SUMMER SESSION OF THE CCD, THE WORKING GROUP DECIDED TO CONTINUE MEETINGS AS NEEDED WITHOUT SPECIFYING A NEW TARGET DATE. CATTO

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